

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DANNY SECRIST AND ERIN SECRIST

APPELLANTS,

**v.
TREADSTONE, LLC, AND
JOHN H. JOHNTZ, III**

RESPONDENTS.

DOCKET NUMBER WD73250

DATE: November 1, 2011

Appeal From:

Buchanan County Circuit Court
The Honorable Patrick K. Robb, Judge

Appellate Judges:

Division Three: Karen King Mitchell, Presiding Judge, James M. Smart, Jr., and Gary D. Witt,
Judges

Attorneys:

Edwin H. Smith, St. Joseph, MO, for appellants.

Keith W. Ferguson, St. Joseph, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DANNY SECRIST AND ERIN SECRIST,

APPELLANTS,

v.

**TREADSTONE, LLC, AND
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RESPONDENTS.

No. WD73250

Buchanan County

Before Division Three: Karen King Mitchell, Presiding Judge, James M. Smart, Jr., and Gary D. Witt, Judges

Danny and Erin Secrist appeal a Judgment in their favor, awarding them damages arising out of an accident that injured Danny Secrist. Danny Secrist was doing remodeling work at an old building owned by Treadstone. The Secrists filed suit against the corporate owner of the building, Treadstone, and one of Treadstone's owners, John Johntz, alleging their negligence caused injuries that he suffered when Danny Secrist stepped into an empty elevator shaft. The Secrists also filed counts sounding in premises liability. A jury heard the case and awarded damages. As to Treadstone, the jury found Johntz to be zero percent at fault, Treadstone twenty percent at fault and the Secrists eighty percent at fault, and the court calculated the damages accordingly. The Secrists now appeal.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division Three holds:

In their sole point on appeal, the Secrists argue the trial court erred in admitting evidence regarding Danny Secrist's positive drug test result after the accident which showed marijuana reflecting a THC level of 50 ng/ml in his system. The court allowed the evidence for the purposes of comparative fault and impeachment. The Secrists argue that because Treadstone and Johntz failed to lay the foundation required by law for the admission of marijuana consumption and impairment evidence by failing to introduce evidence from which a jury could reasonably infer that Danny Secrist had a sufficient level of marijuana in his system to be impaired at the time of the accident. We agree.

As for purposes of comparative fault, there must be evidence beyond the mere fact that a drug was present in someone's system before a reasonable inference can be made that the person is impaired from the ingestion of drugs. To be logically relevant, the jury must be given an indication as to (1) what effect that level of that drug in the body would reasonably have on that individual; (2) that the behaviors exhibited by that person were consistent with having that drug and the amount thereof in his system; and (3) the proximity in time between when the drug was

ingested and the events to which the impairment is relevant. The same is true as to the admissibility of this evidence for impeachment purposes, in that one can use possible impairments to impeach a witness, but the jury cannot logically determine that someone was impaired without some factual basis to establish the factors listed above.

Finally, the Secrists were prejudiced by this error with respect to Treadstone in that the admitted evidence had direct bearing on the issue of fault and was adverse to them. However, as to Johntz, the jury found him zero percent at fault and, accordingly, we do not believe the Secrists were prejudiced by this error in that the Secrists failed to establish any fault on behalf of Johntz.

Opinion by: Gary D. Witt, Judge

November 1, 2011

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